

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

DIRECTOR OF DEPARTMENT OF)
INSURANCE, FINANCIAL INSTITUTIONS)
AND PROFESSIONAL REGISTRATION,)

MAR 02 2010

ADMINISTRATIVE HEARING
COMMISSION

Petitioner,)

vs.)

Case No.: 09-1258 DI

OMER BOWMAN,)

Respondent.)

PETITIONER'S BRIEF

Pursuant to the Commission's Order dated February 17, 2010, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Proposed Findings of Fact, Conclusions of Law and Legal Brief.

PROPOSED FINDINGS OF FACT

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, whose duties include the regulation, supervision, and discipline of licensed insurance producers pursuant to Chapters 374 and 375, RSMo.
2. Respondent was licensed by the Missouri Department of Insurance, Financial Institutions and Professional Registration on October 17, 1987 as an insurance producer, license number 0239037, and his license expired on September 27, 2008. *See Petitioner's Exhibit 1.*

3. On August 30, 2007, the Commissioner of Insurance of the State of Kansas issued a Summary Order proposing to revoke Respondent's Kansas Resident Insurance Agent License because Respondent "failed to respond to a proper inquiry of the Commissioner of Insurance in violation of K.S.A. 40-21,125 and that Respondent engaged in fraudulent, coercive, dishonest practice or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in [the state of Kansas] in violation of K.S.A. 40-4909(a)(8). *See Petitioner's Exhibit 3.*
4. On September 12, 2007, Respondent requested a hearing on the August 30, 2007 Summary Order. *See Petitioner's Exhibit 2.*
5. A hearing on this matter was scheduled for February 21, 2008, at which Respondent failed to appear, either in person or by telephone. *See Petitioner's Exhibit 2.*
6. On March 12, 2008, the Commissioner of Insurance of the State of Kansas issued a Notice of Proposed Default Order revoking Respondent's Kansas Resident Insurance Agent's License. *See Petitioner's Exhibit 2.*
7. On March 26, 2008, the August 30, 2007 Summary Order and the March 12, 2008 Notice of Proposed Default Order became final and Respondent's Kansas Resident Insurance Agent's License was revoked. *See Petitioner's Exhibits 2 and 3.*
8. Respondent did not report the administrative action taken against him by the Commissioner of the State of Kansas to the Director within 30 days of March 26, 2008. *See Petitioner's Exhibit 5.*
9. On March 9, 2009, the Director issued a Subpoena Duces Tecum to Respondent, ordering him to appear at the Department of Insurance, Financial Institutions and Professional Registration, Harry S Truman State Office Building, Room 540, 301 West

High Street, Jefferson City, Missouri on April 2, 2009, at 9:30 a.m. and to produce records regarding a complaint against him filed by or on behalf of Frances Baker. *See Petitioner's Exhibit 4.*

10. The Subpoena Duces Tecum was sent certified mail to Respondent on March 10, 2009. *See Petitioner's Exhibit 6.*

11. Respondent received the Subpoena Duces Tecum on March 23, 2009. *Id.*

12. On April 2, 2009, Respondent failed to appear or produce records as ordered by the March 9, 2009 Subpoena Duces Tecum. *See Petitioner's Exhibit 5.*

13. On December 7, 2009, Petitioner mailed Petitioner's First Request for Admissions to Respondent. *See Petitioner's Exhibit 5.*

14. Respondent did not respond to Petitioner's First Request for Admissions.

CONCLUSIONS OF LAW

15. The Administrative Hearing Commission has jurisdiction over this case pursuant to § 621.045, RSMo (Supp. 2009).

16. Respondent's failure to answer the request for admissions establishes the matters asserted in the request, and no further proof is required. *Supreme Court Rule 59.01, 536.073, RSMo (2000), and 1 CSR 15-3.420(1); See Killian Constr. Co. v. Tri-City Constr. Co., 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).*

17. Section 375.141.1, RSMo (Supp. 2008) provides, in part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

18. Section 375.141.6, RSMo (Supp. 2008) provides:

An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

19. Section 374.210.2, RSMo (Supp. 2008) provides, in part:

If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the director, the director may apply to the circuit court of any county of the state or any city not within a county, or a court of another state to enforce compliance.

* * *

The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

LEGAL BRIEF

Sufficient legal and factual grounds exist for disciplining Respondent's insurance producer license. Respondent's insurance producer license, or its equivalent, has been revoked in the state of Kansas. Respondent failed to notify the Department of the action within 30 days of the final disposition of the matter. Finally, Respondent failed to appear before the Director or produce records as ordered by a subpoena.

A. Revocation of Respondent's insurance producer license, or its equivalent, in another state is cause to discipline Respondent's Missouri insurance producer license.

Respondent has had his insurance producer license or its equivalent revoked by the state of Kansas. *See Petitioner's Exhibits 2, 3, and 5.* Under § 375.141.1(9), RSMo (Supp. 2008), having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory is cause to discipline an insurance producer's Missouri license. Thus, cause exists to discipline Respondent's insurance producer license based upon the State of Kansas revoking Respondent's insurance producer license or its equivalent.

B. Respondent's failure to timely report the revocation of his insurance producer license, or its equivalent, by the state of Kansas is cause to discipline Respondent's Missouri insurance producer license.

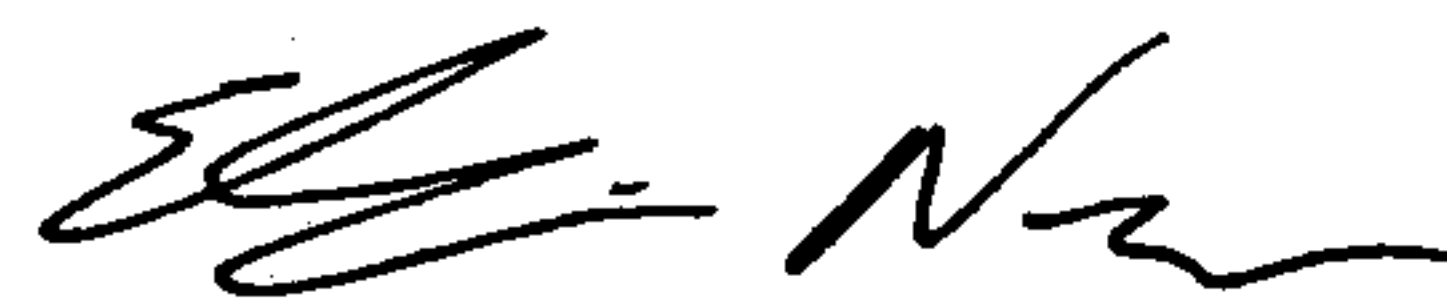
Respondent failed to timely report the revocation of his insurance producer license, or its equivalent, by the state of Kansas. Failure to report to the Director any administrative action taken against the producer in another jurisdiction within 30 days of the final disposition of the matter is a violation of § 375.141.6, RSMo (Supp. 2008). Under § 375.141.1(2), RSMo (Supp. 2008), violating any insurance law is cause to discipline an insurance producer's Missouri license. Thus, cause exists to discipline Respondent's Missouri insurance producer license for failure to timely report Kansas' administrative action against his Kansas insurance agent license within 30 days of the final disposition.

C. Respondent's failure to appear before the Director or produce records as ordered by subpoena is cause to discipline Respondent's Missouri insurance producer license.

Respondent failed to appear before the Director or produce records as ordered by subpoena. Under § 374.210.2, RSMo (Supp. 2008), the Director may suspend, revoke or refuse an insurance produce license for failure to appear and failure to produce records as ordered by subpoena. Thus, cause exists to discipline Respondent's Missouri insurance producer license for failing to appear before the Director and for failing to produce records as ordered by subpoena.

WHEREFORE, Respondent respectfully requests this Commission issue findings of fact and conclusions of law finding cause to discipline Respondent's Missouri insurance producer license pursuant to §§ 375.141.1(2), 375.141.1(9), and 374.210.2, RSMo (Supp. 2008).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Respondent's Brief was mailed first class, with sufficient postage attached, via the United States Postal Service on the 2nd day of March, 2010, to:

Omer Bowman
Respondent
14737 Robinson St.
Overland Park, Kansas 66223

A handwritten signature in black ink, appearing to be "J. Bowman", is written over a horizontal line.